

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

CHARLES JAMES, )  
Petitioner, )  
v. ) No. 4:13CV306 HEA  
UNITED STATES OF AMERICA, )  
Respondent. )

# **OPINION, MEMORANDUM AND ORDER**

In December 2009 petitioner was sentenced to 120 months' imprisonment for possession with intent to distribute 50 grams or more of cocaine base in violation of 21 U.S.C. § 841(a). Because the quantity of cocaine base exceeded 50 grams, defendant was sentenced to the statutorily required minimum sentence of ten years. 21 U.S.C. § 841(b)(1)(A)(iii) (2009).

Petitioner now moves the Court to reduce his sentence under the Fair Sentencing Act of 2010.<sup>1</sup> The Fair Sentencing Act of 2010, SB 1789, was signed into law on August 3, 2010, as Public Law 111-220. The Fair Sentencing Act amended 21 U.S.C. § 841(b)(1), in part, by increasing the quantity of cocaine base that would

<sup>1</sup>Petitioner mistakenly bases his argument on a supposed retroactive amendment to the Sentencing Guidelines. His argument is more accurately recharacterized as coming under the Fair Sentencing Act. Either way, it lacks merit.

result in a mandatory minimum ten-year sentence from 50 grams to 280 grams and by increasing the quantity that would result in a mandatory minimum sentence of five years from 5 grams of cocaine base to 28 grams of cocaine base. However, because the Fair Sentencing Act contains no express statement that it is retroactive, the general savings statute, 1 U.S.C. § 109, requires that the penalties that were in effect at the time the crime was committed be applied to the sentence. United States v. Brewer, 624 F.3d 900, 909 n. 7 (8th Cir.2010). As a result, the Court does not have the authority to reduce petitioner's sentence, and the petition will be denied.

Accordingly,

**IT IS HEREBY ORDERED** that this action is **DISMISSED**.

An Order of Dismissal will be filed herewith.

Dated this 26th day of February, 2013.



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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE